

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

.....X

In re:

Chapter 7

BMT DESIGNERS & PLANNERS, INC.,
fdba BMT D&P, fdba BMT fdba BMT DAS US,

Case No. 22-10123 (MG)

Debtor.

.....X

**STIPULATION AND ORDER BETWEEN TRUSTEE AND SURGE
TACOMA TO REJECT THE LEASE FOR THE COMMERCIAL SPACE
LOCATED IN TACOMA, WASHINGTON AND FOR RELATED RELIEF**

This stipulation (“Stipulation”) is entered into by and between Salvatore LaMonica, solely in his capacity as the Chapter 7 Trustee (“Trustee”) of the bankruptcy estate (“Estate”) of BMT Designers & Planners, Inc., fdba BMT D&P, fdba BMT fdba BMT DAS US (“Debtor”), and Surge Coworking Tacoma (“Landlord”, along with the Trustee are “Parties”) to reject the lease for the commercial space known as, and located at, Office 219 at Surge Tacoma, 2367 Tacoma Ave S, Tacoma, Washington 98402 (“Premises”), *nunc pro tunc*, as of February 24, 2022, and for related relief as set forth herein.

RECITALS

i. Procedural Background

1. On February 1, 2022 (“Petition Date”), the Debtor filed a voluntary petition under Chapter 7 of Title 11 of the United States Code (as amended, “Bankruptcy Code”) in the United States Bankruptcy Court, Southern District of New York (“Court”).

2. On or about the Petition Date, the Trustee was appointed as the interim Chapter 7 Trustee of the Debtor Estate, has since duly qualified and is the permanent Trustee administering the Estate.

ii. The Tacoma Premises Lease

3. Prior to the Petition Date, the Parties entered into a month-to-month space license agreement (“Lease”), pursuant to which the Debtor leased the Tacoma Premises from the Landlord.

4. In addition to the Lease, the Debtor had previously rented other locations from the Landlord, although the Lease for the Premises was the only location remaining (not terminated) as of the Petition Date. Accordingly, the Landlord is holding a total security deposit of \$1,175.00 (“Security Deposit”).

5. As of the Petition Date, the Debtor owed \$0.00 in outstanding pre-petition lease payments to the Landlord on account of the Lease.

6. The Lease provided that the Lease could be terminated with at least 30 days’ notice prior to the end of the monthly license term.

7. On January 24, 2022, the Debtor provided notice to the Landlord of termination of the Lease. Pursuant to the terms of the Lease, the Lease was thereafter terminated on February 24, 2022.

8. The Trustee has determined, in the sound exercise of his business judgment, that rejection of the Lease pursuant to the terms and conditions hereof is in the best interest of the Estate and its creditors, in order to mitigate damages and minimize any potential claims that may be made by the Landlord against the Estate.

9. The Trustee now seeks to reject the Lease as set forth herein.

TERMS AND CONDITIONS

10. The recitals above are incorporated by reference as if set forth at length herein and the Parties agree to the accuracy thereof.

11. The Lease shall be deemed rejected, *nunc pro tunc*, as of February 24, 2022, pursuant to Bankruptcy Code section 365.

12. The automatic stay imposed under Bankruptcy Code section 362 is hereby modified to the extent necessary to permit the Parties to enter into this Stipulation and to carry out each of the terms and conditions set forth herein.

13. By no later than ten (10) business days after the Court so-orders this Stipulation, the Landlord shall return the Security Deposit in the amount of \$1,175.00 to the Trustee, by check payable to “Salvatore LaMonica, as Trustee of BMT Designers & Planners, Inc.,” and mailed to “LaMonica Herbst & Maniscalco, LLP, Attn: Jacquelyn Loftin, 3305 Jerusalem Avenue, Wantagh, New York 11793.”

14. Upon the Court so-ordering this Stipulation, the Trustee waives any and all interests the Estate may have in and to the Lease.

15. Upon the Court so-ordering this Stipulation, the Parties agree to waive any and all claims and causes of action, of whatever kind, nature, character and description, whether in law or equity, whether in tort, contract or under other applicable law, whether known or unknown, whether liquidated or unliquidated, whether contingent or fixed, and whether anticipated or unanticipated, which each of the Parties had, have, may ever have, or may ever claim to have, against each other, including but not limited to any claims relating in any manner whatsoever to, arising in or in connection with the Lease.

16. If the Court does not approve this Stipulation, then this Stipulation shall be deemed null and void and of no force and effect, and the Parties to this Stipulation shall retain all rights, claims and/or defenses that they may have against each other.

17. This Court shall retain exclusive jurisdiction over the subject matter of this Stipulation in order to resolve any dispute in connection with the rights and duties specified hereunder.

18. This Stipulation may be executed in any number of counterparts, any and all of which shall be deemed to be original. The Parties shall be bound by their signatures transmitted by facsimile or electronic mail (in pdf format) as if such signatures were original “ink” signatures.

19. The Parties jointly request entry of an order approving this Stipulation and its terms.

Dated: March 14, 2022
Wantagh, New York

LaMONICA HERBST & MANISCALCO, LLP
Counsel to Salvatore LaMonica, Chapter 7 Trustee

By: s/ Jacquelyn S. Loftin
Jacquelyn S. Loftin, Esq.
Cristina M. Lipan, Esq.
3305 Jerusalem Avenue, Suite 201
Wantagh, New York 11793
Telephone: 516.826.6500

Dated: March 14, 2022
Tacoma, Washington

TACOMA CENTER BUILDING LLC
dba SURGE TACOMA

By: s/ Stasha Moreno
Stasha Moreno
Chief Operations Officer
2367 Tacoma Ave S
Tacoma, Washington 98402
Telephone: 253.365.2737

SO ORDERED, on the ___ day of April, 2022

Honorable Martin Glenn
Chief United States Bankruptcy Judge